APPEAL NO. 021940
FILED SEPTEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 2, 2002. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and had disability from _____ through February 6, 2002, and from March 13 through June 30, 2002. The appellant (carrier) urges on appeal that these determinations are legally erroneous. The claimant urges affirmance.

DECISION

We affirm the hearing officer's decision as reformed.

Section 401.011(10) defines compensable injury as an injury that arises out of and in the course and scope of employment for which compensation is payable under the 1989 Act. Section 401.011(12) defines "course and scope of employment" to mean "an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer." The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). By the same token the carrier has the burden to prove that a preexisting condition is the sole cause of an incapacity. Page, at 100.

Essentially, the carrier argues that the claimant failed to prove a nexus between her employment and her injury and, therefore, she did not prove that she was acting within the course and scope of her employment when she sustained an injury. In support of its position, the carrier cites several cases, which either involve the personal comfort doctrine or claimants who were injured while merely walking while at work. However, as the facts in the present case involve neither of these scenarios the cited cases are not persuasive. The evidence reflects, despite the carrier's argument to the contrary, that the claimant did not testify that she did not know how her injury occurred. Rather, she testified that while performing her duties as a nurse, she was removing a vital signs machine on wheels from a patient's room and in the process of doing so turned, while holding the machine with one hand, and when she began to walk her knee popped. In light of this evidence, we cannot agree that a nexus between the claimant's employment and her injury was not established, or that her injury was not one which arose out of the course and scope of her employment. For clarification purposes, however, we reform Finding of Fact No. 3 to delete a surplus phrase and to read as follows: The claimant was in the course and scope of her employment when she was injured.

The carrier also asserts that the claimant "failed to sufficiently prove her case by the requisite expert evidence." Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). Lay testimony is sufficient to establish causation where, based upon common knowledge, a fact finder could understand a causal connection between the employment and the injury, but expert testimony may be required where such common knowledge does not exist. Texas Workers' Compensation Commission Appeal No. 941464, decided January 9, 1995. We do not agree that the injury in the present case is one that would require expert medical evidence to establish causation. We perceive no error in the hearing officer relying on common knowledge to establish causation.

Whether the claimant sustained a compensable injury and had disability involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY**
**800 BRAZOS, SUITE 750, COMMODORE 1**
**AUSTIN, TEXAS 78701**.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Michael B. McShane
Appeals Judge